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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES
INDUSTRIES, INC., *et. al.*

Plaintiffs,

v.

GARY FUNG, *et. al.*

Defendants.

Case No. **CV-06-05578 SVW (JCx)**

**PLAINTIFFS' STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON
WILLFUL AND INNOCENT
INFRINGEMENT UNDER 17 U.S.C.
§ 504(C)(2)**

Date: September 23, 2013

Time: 1:30 PM

Ctrm: 6

Judge: The Hon. Stephen V. Wilson

1 Pursuant to Rule 56-1, plaintiffs submit the following Statement of
 2 Uncontroverted Facts and Conclusions of Law in support of their Motion for
 3 Summary Judgment on Willful and Innocent Infringement under 17 U.S.C. §
 4 504(c)(2).

5 **UNCONTROVERTED FACTS**

- 6 1. Defendants intentionally and purposefully induced copyright infringement,
 7 and fostered a community that encouraged – indeed, celebrated – copyright
 8 infringement. *See Columbia Pictures Indus., Inc. v. Fung*, No. CV-06-05578
 9 SVW (JCx), 2009 WL 6355911 (C.D. Cal. Dec. 21, 2009), *aff'd*, 710 F.3d
 10 1020 (9th Cir. 2013).¹
- 11 2. All motion pictures and television programs published by Plaintiffs are
 12 published with copyright notices which contain the symbol ©, the year of
 13 publication, and the identity of the copyright owner. Ruvalcaba Decl. ¶ 4.
- 14 3. For all motion pictures and television programs published by Plaintiffs, these
 15 copyright notices are electronically or photomechanically incorporated into
 16 the programs. These notices are permanent and cannot be deleted or altered
 17 under normal conditions of use. Ruvalcaba Decl. ¶ 5.
- 18 4. For all motion pictures and television program published by Plaintiffs, these
 19 copyright notices appear when the programs are performed in their entirety, in

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 22 ¹ Beyond this recitation of the Court's decision in the first phase of the case,
 23 these uncontested facts do not include the facts that were already established at
 24 the first phase of the case. The Court has already determined that there is no
 25 genuine dispute as to any of those facts, and the Court's prior decision (along with
 26 the Ninth Circuit's affirmance) is now the law of the case. *See Mem. In Support of*
Mot. for SJ, at 5-6. Rather, beyond this recitation of the Court's decision, these
 uncontested facts include only new matter which the Court did not already
 adjudicate during the first phase of the case. Plaintiffs incorporate by reference the
 facts that were already established at the first phase.

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1 a manner that is immediately apparent under reasonable examination.

2 Ruvalcaba Decl. ¶ 6.

3 5. For all motion pictures and television programs published by Plaintiffs, these
4 copyright notices are located:

- 5 a. With or near the title;
6 b. With the cast, credits, and similar information;
7 c. At or immediately following the beginning of the work; or
8 d. At or immediately preceding the end of the work.

9 Ruvalcaba Decl. ¶ 7.

10 6. When any motion picture or television program published by Plaintiffs is
11 distributed to the public for private use in a physical format (such as a CD or
12 DVD), the copyright notice is always included on the housing or container of
13 the work. This copyright notice is permanently legible under normal
14 conditions of use, and is immediately apparent under reasonable examination.

15 Ruvalcaba Decl. ¶ 8.

CONCLUSIONS OF LAW

17 7. Defendants' liability for induced infringement necessarily establishes that
18 Defendants acted intentionally and purposefully. *Metro-Goldwyn-Mayer*
19 *Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 936-37 (2005) ("one who
20 distributes a device with the *object* of promoting its use to infringe copyright
21 ... is liable for the resulting acts of infringement by third parties"); *id.* at 937
22 ("The inducement rule . . . premises liability on *purposeful*, culpable
23 expression and conduct") (all emphases added).

24 8. Because Defendants acted intentionally and purposefully, they are willful
25 infringers under 17 U.S.C. § 504(c)(2). See *Washington Shoe Co. v. A-Z*
26 *Sporting Goods Inc.*, 704 F.3d 668, 674 (9th Cir. 2012) ("[T]o prove
27 'willfulness' under the Copyright Act, the plaintiff must show (1) that the
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1 defendant was actually aware of the infringing activity, or (2) that the
 2 defendant's actions were the result of reckless disregard for, or willful
 3 blindness to, the copyright holder's rights." (quotation marks omitted)); *Arista*
 4 *Records LLC v. Usenet.com, Inc.*, No. 07 Civ. 8822 (HB), 2010 WL 3629587,
 5 at *5-6 (S.D.N.Y. Sept. 16, 2010) (holding that finding of induced
 6 infringement necessarily established willful infringement); *Arista Records*
 7 *LLC v. Lime Group, LLC*, No. 06-cv-05936 (S.D.N.Y.), Order, April 26, 2011
 8 (Dkt. #712) (same).

- 9 9. Because Defendants acted intentionally and purposefully, they are not
 10 innocent infringers under 17 U.S.C. § 504(c)(2). *See* 17 U.S.C. § 504(c)(2)
 11 (innocent infringement requires showing that defendants were "not aware and
 12 had no reason to believe that [their] acts constituted an infringement of
 13 copyright").
- 14 10. Plaintiffs' copyright notices comply with "Form of Notice" requirements. *See*
 15 17 U.S.C. § 401(b) ("Form of Notice" – copyright notice must contain the
 16 symbol ©, the date of publication, and the copyright owner).
- 17 11. Plaintiffs' copyright notices comply with "Position of Notice" requirements.
 18 *See* 17 U.S.C. § 401(c) ("Position of Notice" – compliance with Register of
 19 Copyright's regulations "will satisfy this requirement"); 37 C.F.R. §
 20 201.20(c), (h) (setting forth notice requirements enumerated in ¶¶ 2-6, *supra*).
- 21 12. Defendants had access to Plaintiffs' copyrighted works containing notices of
 22 copyright. *BMG Music v. Gonzalez*, 430 F.3d 888, 892 (7th Cir. 2005) ("[The
 23 infringer] had 'access' to records and compact disks bearing the proper
 24 notice. . . . [T]he statutory question is whether 'access' to legitimate works
 25 was available rather than whether infringers earlier in the chain attached
 26 copyright notices to the pirated works. [The infringer] readily could have

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1 learned, had she inquired, that the music was under copyright.”); *Maverick*
2 *Recording Co. v. Harper*, 598 F.3d 193, 197 (5th Cir. 2010) (same).

3 13. Because Plaintiffs’ copyright notices comply with statutory requirements,
4 Defendants are ineligible to claim the innocent infringement defense. 17
5 U.S.C. § 401(d) (“If a notice of copyright in the form and position specified
6 by this section appears on the published copy or copies to which a defendant
7 in a copyright infringement suit had access,” innocent infringement defense is
8 barred); *Maverick*, 598 F.3d at 199 (when proper notices affixed, “the
9 infringer’s knowledge or intent” is irrelevant, and innocent infringement
10 defense is foreclosed “as a matter of law”).

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12 Dated: August 23, 2013

Respectfully submitted,
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